

**QUESTIONNAIRE FOR THE NATIONAL REPORT
ON THE IMPLEMENTATION OF THE DIRECTIVE
FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003**

UNITED KINGDOM

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COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states :

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor's family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine

the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes were the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE:

THE DIRECTIVE HAS NOT BEEN AND WILL NOT BE IMPLEMENTED IN THE UNITED KINGDOM. THE PROVISIONS REFERRED TO BELOW ARE THOSE WHICH DEAL WITH FAMILY REUNIFICATION IN THE UNITED KINGDOM BUT THEY ARE *NOT* TRANSPOSITION NOR IMPLEMENTATION OF THE DIRECTIVE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

*Please **duplicate** the table below if there is more than one MAIN norm of transposition*

This table is about: a text already adopted
TITLE: Immigration Rules (HC 395)
DATE:

The current rules are dated 1 October 1994 but they can be amended by putting a Statement of Changes before Parliament (which does not require a vote). Such changes are made a number of times each year (there were six statements in 2006) and so the rules are constantly evolving and no one date can therefore be given

NUMBER:

DATE OF ENTRY INTO FORCE:

The current rules are dated 1 October 1994 but they can be amended by putting a Statement of Changes before Parliament (which does not require a vote). Such changes are made a number of times each year (there were six statements in 2006) and so the rules are constantly evolving and no one date can therefore be given.

PROVISIONS CONCERNED

Please see note above – there is no transposition

The Immigration Rules cover other matters of UK Immigration Policy *in addition* to family reunification, including:

1. General provisions governing the right to enter or remain in the UK
2. Visitors
3. Students
4. Individuals coming for employment (and related categories)
5. Asylum
6. Refusal of right to remain and entry
7. Miscellaneous provisions

REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the correct box):

LEGISLATIVE: (*BUT SEE NOTE BELOW*)

REGULATION: (*BUT SEE NOTE BELOW*)

CIRCULAR or INSTRUCTIONS

There is debate about the exact legal status of the Immigration Rules. The power to make the Immigration Rules comes from statute (legislation) in the Immigration Act 1971. However, the Statements of Changes to the Immigration Rules are laid before the UK Parliament and do not require a vote. Though the rules could be categorised as rules of practice, in effect they have the force of law and this has been recognised in UK jurisprudence.

Q.1.B.

N/A

Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

N/A

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

N/A

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

N/A

Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

N/A

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

N/A

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

N/A

SECOND PART

AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

OUI

NON

Please explain

In order to consider the answers given in this questionnaire a brief summary of practice in the United Kingdom is necessary.

The practice to be followed in the administration of the Immigration Acts for regulating entry into and the stay of persons in the United Kingdom, including for family members, is laid down by the Secretary of State for the Home Department in the Immigration Rules (though these rules do not apply to EEA nationals or their family members).

In relation to family reunification, the rules can be broadly stated to comprise three categories:

- 1. The family members of those who are ‘settled’ in the United Kingdom*
- 2. The family members of those who are in a ‘category leading to settlement’*
- 3. The family members of those who are neither settled nor in a category leading to settlement.*

The immigration rules define ‘settled’ to mean those who are free from any restriction on the period for which they can remain in the UK and are ordinarily resident. Settled persons therefore include British Citizens and third country nationals whose stay is free from any time restriction. These third country nationals are commonly referred to as ‘permanent residents’ though the immigration rules use the term ‘indefinite leave to remain’ and the term ‘settlement’ is also used. The Immigration Rules do not differentiate between the family members of permanent residents and of British citizens. The broadest right to family reunification is attached to this group, including family reunification for first degree ascending relatives in certain circumstances. The family members of this group are also, in certain circumstances, entitled to make applications for the right to remain from within the United Kingdom. **The family members of settled persons are not dealt with in this questionnaire.**

Individuals in a ‘category leading to settlement’ are those who do not currently have a permanent right to remain in the United Kingdom but, if they continue to comply with the terms and conditions of their stay, they will ultimately be eligible to apply for settlement (permanent residence). The categories leading to settlement are:

- *Work permit holder*

- *Highly skilled migrant*
- *Innovator*
- *Writers, composers and artists*
- *Investors*
- *Retired person of independent means*
- *Persons with UK ancestry*
- *Sole representatives*
- *Persons intending to establish themselves in business*
- *Representatives of overseas newspapers, news agencies and broadcasting organisations*
- *Private servants in diplomatic households*
- *Domestic workers in private households*
- *Ministers of religion*
- *Operation ground staff of an overseas-owned airline*

(paragraphs 128 to 135HA, 136 to 176, 178 to 193, 200 to 239 of the Immigration Rules)

*The immigration rules make specific provision for the family members of those in these categories and **it is these family members who are discussed in the remainder of the questionnaire** (in addition to family members of refugees)*

*The third category includes those who it is not envisaged will ultimately obtain settlement (permanent residence), such as students. Though the immigration rules do make limited provision for their family members, **those family members are not discussed in this questionnaire** as they are not family members of the type of third party national envisaged by Article 3.1 of the directive.*

*In addition to these three groups, the UK grants humanitarian protection to those whose situation engages Article 3 of the ECHR and discretionary leave to those whose situation engages Article 8 or one of a number of published Home Office policies outside the Immigration Rules. **These categories will usually lead to settlement but are not the subject of this questionnaire as they are excluded from the directive by Article 3.2 (b) and 3.2 (c).***

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

The Home Office publishes an annual report entitled ‘Control of Immigration: Statistics.’ The most recent report available is for 2005 published in August 2006. This report does not give a breakdown for all categories which are ‘categories leading to settlement.’ but does give a breakdown for work permit holders and their dependents which is the most used of the categories leading to settlement.

The report is very detailed and to repeat all the figures is beyond the scope of this questionnaire. The full document for 2005 can be found at <http://www.official-documents.gov.uk/document/cm69/6904/6904.pdf>.

Briefly, for the period from 2001 to 2005, there was an increase in those granted entry as work permit holders from 81,100 to 91,500 – though most of the increase occurred from 2004 to 2005 and of the total number for 2005, 40,300 of these entered to take employment for one year or less). There was also an increase in those granted entry as the dependents of work permit holders from 27,800 to 45,500.

The area from which the greatest number of work permit holders originate is Asia (excluding the Indian sub-continent), followed by the Americas (with the majority from the US), the Indian sub-continent, non-EEA Europe, Africa, Oceania, and finally, the Middle East. The geographical trend has remained constant though the number from non-EEA Europe has dropped from 2003 to 2005 (it can be presumed because of the expansion of the EEA) and the largest proportional rise in work permit holders has been in those from the Indian sub-continent who by 2005 were almost equal in number to those from the Americas and brought to the UK three times the number of dependants as those from the Americas.

UK Visas also release a document entitled 'entry clearance statistics' and the most recent for the financial year 2005 to 2006 can be found at

<http://www.fco.gov.uk/Files/kfile/Annual%20Stats%20booket%202005-06%20master.pdf>.

This document indicates that for this period there was a decline in work permit applications of 23 percent (it does not give a full breakdown for the dependents of work permit holders). It appears therefore that there may be a drop in work permit applications which has not yet been registered by the Home Office's own report as this only covers to the end of 2005. The Home Office's report does show that there was a large increase from 2004 to 2005 so this may have been an exceptional year and numbers may now be reverting to pre-2005 levels..

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:

- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor's residence permit:

Q.6. A. Is the period of validity of the sponsor's residence permit of one year or more according to article 3 § 1 of the Directive?

OUI

NON

Q.2.B. Quote precisely the period enshrined in national law:

The exact period for which the sponsor will be granted an initial right to reside in the United Kingdom depends on the category used. For instance, work permit holders can be granted an initial period of five years if work permit approval has been given for that period of time. However, highly skilled migrants will be granted an initial two years and be expected to extend their right to remain near the end of that period. The immigration rules state the maximum initial period to be granted for each category.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

In the United Kingdom, the closest equivalent to a 'sponsor who has reasonable prospects of obtaining the right of permanent residence' is an individual in a 'category

leading to settlement'. These individuals are those who do not currently have a permanent right to remain in the United Kingdom but, if they continue to comply with the terms and conditions of their stay, they will ultimately be eligible to apply for settlement (permanent residence).

The categories leading to settlement are: work permit holder; highly skilled migrant; innovator; writers, composers and artists; investors; retired person of independent means; persons with UK ancestry; sole representatives; persons intending to establish themselves in business; representatives of overseas newspapers, news agencies and broadcasting organisations; private servants in diplomatic households; domestic workers in private households; ministers of religion; airport-based operational ground staff of an overseas-owned airline. (paragraphs 128 to 135HA, 136 to 176, 178 to 193, 200 to 239 of the Immigration Rules)

Q.7. – Members of the family concerned:

1. *Spouses*

(paras 194 to 196, 240 to 242 and 271 to 273 of the IRs)

2. *Civil Partners*

(those in registered same sex partnerships under the Civil Partnership Act 2004. This act, at Schedule 20, recognises certain overseas same sex partnerships as being equivalent to civil partnership) (paras 194 to 196, 240 to 242 and 271 to 273 of the IRs)

3. *Children under 18*

(if unmarried and not leading an independent life)(paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

4. *Unmarried partners*

(those in an opposite sex relationship who have been 'living together in a relationship akin to marriage which has subsisted for two years or more')(paras 295j to 295 k of IRs)

5. *Same sex partners*

(those in a same sex relationship who have been 'living together in a relationship akin to civil partnership which has subsisted for two years or more') (paras 295j to 295 k of IRs)

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive ?

OUI

NON

If not, explain

Q.7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

As there has been no transposition, there is no translation in UK law. UK law does allow for third country nationals of 'whatever status' though this is subject to restrictions on applications from within the UK (first applications for the right to reside have to be made from a British mission overseas) and subject to refusal on various general grounds in paragraph 320 of the immigration rules (which apply equally to the family members of British citizens and permanent residents as to the family members of third country nationals in a category leading to settlement.)

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

OUI

NON

Not applicable

Q.9 – If yes, are those provisions based on:

Q.9.A - Bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other?

OUI

NON

Specify which provisions

Not applicable

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

OUI

NON

Specify which provisions

Not applicable

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

OUI

NON

Specify which provisions

Not applicable

Q.9.D. The European Convention on the legal status of migrant workers of 24 November 1977 (a 3 § 4)?

OUI

NON

Not applicable

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

OUI

NON

Not applicable

If yes, please specify which provisions

BENEFICIARIES (ARTICLE 4)

- *Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.*
- *Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.*
- *Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.*
- *Regarding article 4 § 6, the Court states ""It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term 'family reunification' must be interpreted in the*

context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person's family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

OUI

NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

OUI

NON

Yes, provided that both parents are being or have been admitted to the United Kingdom. If both parents are not being admitted, then further requirements must be met. (paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

OUI

NON

Yes, provided that both parents are being or have been admitted to the United Kingdom. If both parents are not being admitted, then further requirements must be met. (paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

OUI

NON

Yes, provided that both parents are being or have been admitted to the United Kingdom. If both parents are not being admitted then one of the following must apply to the child:

- (a) the parent he is accompanying or joining is his sole surviving parent; or*
- (b) the parent he is accompanying or joining has had sole responsibility for his upbringing; or*
- (c) there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care)*

(paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

OUI

NON

If the other parent is not being admitted then one of the following must apply to the child:

- (a) the parent he is accompanying or joining is his sole surviving parent; or*
- (b) the parent he is accompanying or joining has had sole responsibility for his upbringing; or*
- (c) there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care)*

(paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

Specify if necessary the proofs required

For (a) above, a death certificate will be required.

For (b)above, UK Visas guidance (the Diplomatic Service Procedures) states at paragraph 14.5:

‘In order to fulfil the 'sole responsibility' requirement of the Rules, a sponsoring parent must be able to show that he or she has been solely responsible for exercising parental care over the child for a substantial period. This is in contrast to the concept of the ordinary family unit where responsibility for the child's upbringing is shared between both parents.

You will need to be satisfied that the sponsoring parent has consistently supported the child, either by direct personal care or by regular and substantial financial remittances.

If the sponsoring parent and child are separated, the child will normally be expected to have been in the care of that parent's relatives rather than the relatives of the other parent. This means, for example, that an application by a child to join his/her mother in the United Kingdom on the basis of sole responsibility should normally be refused if it transpires that the child has been in the care of his/her paternal relatives and that the father lives nearby and

takes an active interest in the child's welfare.

The following factors should be considered in assessing sole responsibility.

- *If the parents' marriage / civil partnership has been dissolved, one of the parents must have been awarded legal custody, which includes assumption of responsibility for the child. (You should take care to ensure that the issue of a settlement entry clearance to the child will not contravene the terms of the custody order.) **Annex 1** contains a list of those countries whose custody orders can be recognised as valid in UK.*
- *Does the marriage / civil partnership subsist, but the parents do not live together?*
- *Are the parents married / in a civil partnership?*
- *If the parent migrated to the UK:*
 - *how long has the parent been separated from the child ?*
 - *what were the arrangements for the care of the child before and after the parent migrated ?*
 - *what has been/what is the parent's relationship with the child?*
- *By whom, and in what proportions, are the cost of the child's maintenance borne?*
- *Who takes the important decisions about the child's upbringing, for example where the child lives, the choice of school, religious practice etc?*

For (c) above, UK Visas guidance (the Diplomatic Service Procedures) states at paragraph 14.6:

'You should always consider whether the circumstances surrounding the child are exceptional in relation to those of other children living in that country. The fact that the general standard of living in the United Kingdom is higher than in the child's own country is not acceptable as a serious and compelling reason under this provision.

The factors relating to the parent in UK can be of an emotional or physical nature (or both).

Where the physical or mental incapability of the parent who is not in the UK has been established, an entry clearance should normally be granted.'

You should consider all the evidence as a whole, deciding each application on its merits.

Q.11 F. *Minor children adopted of the sponsor (a 4 §1.c) ?*

OUI

NON

If the other parent is not being admitted then one of the following must apply to the child:

- (a) the parent he is accompanying or joining is his sole surviving parent; or*
- (b) the parent he is accompanying or joining has had sole responsibility for his upbringing;*
- or*

(c) there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care)

(paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

Specify if necessary the proofs required

See 11.E above

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

OUI

NON

Specify if necessary the proofs required

This depends on the facts of each case – see the guidance given at 14.5 and 14.6 of the Diplomatic Service Procedures given above.

g.g. Does national law provide that those children shall be adopted "in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations'

OUI (*similar*)

NON

The immigration rules define a 'parent' as including 'an adoptive parent, where a child was adopted in accordance with a decision taken by the competent administrative authority or court in a country whose adoption orders are recognised by the United Kingdom or where a child is the subject of a de facto adoption in accordance with the requirements of paragraph 309A of these Rules.'(paragraph 6 of IRs)

There is therefore a similar reference to that in the directive but allowance is made for 'de facto' adoption as defined by the immigration rules themselves.

This is a very brief summary as UK adoption law (and its relation to immigration law) is very complex.

Specify if necessary the proofs required

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

OUI

NON (but see below)

The immigration rules require that the child is the child of the sponsor. If the child is not the child of the sponsor but only of the spouse (or civil partner) then that will not meet the requirements of the immigration rules. However, the definition of ‘parent’ in the Immigration Rules is wider than just biological parent and this must be considered. For instance, if the child’s biological father has died and the child’s mother has married the sponsor, the relationship between child and sponsor will meet the immigration rules and a right to family reunification will exist.

A ‘parent’ includes:

- a) the stepfather of a child whose father is dead and the reference to stepfather includes a relationship arising through civil partnership;*
- (b) the stepmother of a child whose mother is dead and the reference to stepmother includes a relationship arising through civil partnership and;*
- (c) the father as well as the mother of an illegitimate child where he is proved to be the father;*
- (d) an adoptive parent, where a child was adopted in accordance with a decision taken by the competent administrative authority or court in a country whose adoption orders are recognised by the United Kingdom or where a child is the subject of a de facto adoption in accordance with the requirements of paragraph 309A of these Rules (except that an adopted child or a child who is the subject of a de facto adoption may not make an application for leave to enter or remain in order to accompany, join or remain with an adoptive parent under paragraphs 297-303);*
- (e) in the case of a child born in the United Kingdom who is not a British citizen, a person to whom there has been a genuine transfer of parental responsibility on the ground of the original parent(s)' inability to care for the child.*

(paragraph 6 of IRs)

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

OUI

NON

Specify if necessary the proofs required

Not applicable

Q.11. J. Minor children adopted of the spouse (a 4 §1.d)?

OUI

NON

Not applicable

Q.11. K. If yes,

k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

OUI

NON

Not applicable

Specify if necessary the proofs required

k.k. Does national law provide that those children shall be adopted "in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations"?

OUI

NON

Specify if necessary the proofs required

Not applicable

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

OUI

NON

If the other parent is not being admitted then one of the following must apply to the child:

(a) the parent he is accompanying or joining is his sole surviving parent; or

(b) the parent he is accompanying or joining has had sole responsibility for his upbringing; or

(c) there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care)

(paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

In the case of shared custody, (a) will never apply and it is difficult to envisage a situation

where the onerous tests set by (b) and (c) will be met.

Specify if necessary

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

OUI

NON

Not applicable

Specify if necessary

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

OUI

NON

Specify if necessary

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

OUI

NON

Specify if necessary

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

OUI

NON

If yes, indicate the age required

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

OUI

NON

If not, explain Si non, expliquez

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

OUI

NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

OUI

NON

Not applicable

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Not applicable

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

OUI

NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

OUI

NON

There is no provision within the immigration rules for first degree relatives in the ascending line of the sponsor. There is, though, a special concession where family reunification may be allowed in this instance. This concession applies when the sponsor has been transferred to the UK branch of the employer's company and the relative is genuinely dependent on the sponsor and will continue to form part of the family unit. (see chapter 17.15 of Diplomatic Service Procedures)

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

OUI

NON

Not applicable

How each of those criterions is transposed and checked?

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

OUI

NON

Not applicable

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

OUI

NON

Not applicable

How each of those criterions is transposed and checked?

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

OUI

NON

There is no provision within the immigration rules for unmarried adult children. There is, though, a special concession where family reunification may be allowed. This concession applies when the sponsor has been transferred to the UK branch of the employer's company and the child is genuinely dependent on the sponsor and will continue to form part of the family unit. (see chapter 17.15 of Diplomatic Service Procedures)

Also, if the child enters the UK before the age of 18, he or she can continue to extend their right to remain as a dependent child notwithstanding the fact he or she subsequently becomes an adult.

If necessary, explain how this procedure is organised

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

OUI

NON

Not applicable

If necessary, specify how each of those criteria ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

OUI

NON

If necessary, specify how this condition is assessed

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

OUI

NON

Not applicable

If necessary, specify how each of those criteria ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

OUI

NON

Not applicable

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

OUI

NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long-term relationship?

OUI

NON

If yes, specify how your Member State assess this situation

The immigration rules require that:

- 1. the parties have been living together in a relationship akin to marriage or civil partnership which has subsisted for two years or more; and*
- 2. any previous marriage or civil partnership (or similar relationship) by either partner has permanently broken down; and*
- 3. the parties are not involved in a consanguineous relationship with one another;*

Opposite sex couples are termed ‘unmarried partners’, same sex couples are ‘same sex partners’. (paras 295j to 295 k of IRs)

Q.22 B – This partnership shall be registered?

OUI

NON

UK law recognises registered relationships (spouses and civil partners) and unregistered relationships (*unmarried and same sex partners*). *For unregistered relationships, the main test is that the couple have been living together in a relationship akin to marriage or civil partnership which has subsisted for two years or more. This requirement does not apply to spouses and civil partners.*

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

OUI

NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

OUI

NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

OUI

NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

OUI

NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

In so far as Article 4.3 is followed in UK law, this has been done by way of the immigration rules.

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

OUI

NON

UK law reflects 4.4 of the directive in that it will not allow another spouse to enter as a spouse when the sponsor already has a spouse living with him in the UK.(see paragraph 13.19 of the Diplomatic Service Procedures)

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

OUI

NON

If the spouse cannot be admitted as a spouse, then the children will not be admitted..(see Paragraph 13.19 of the Diplomatic Service Procedures)

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

OUI

NON

However, the UK government has recently proposed that a minimum limit of 21 years may be introduced in the future.

Q.30 – If yes,

Q.30 A – What is the age required?

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Not applicable

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

OUI

NON

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Not applicable

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

OUI

NON

Not applicable

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

OUI

NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

The applications are dealt with by British missions (British Embassies, British High Commissions and British Consulate Generals). The applications are made in the country of origin of the applicant or in a third country where the applicant is legally resident. The body which oversees British missions is UK Visas - a joint Directorate of the Home Office and the Foreign & Commonwealth Office. UK Visas works closely with the Border and Immigration Agency (BIA) of the Home Office, the government department responsible for immigration policy in the United Kingdom.

Q.35. B – Are NGO's associated to this procedure?

OUI

NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?

By family members

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

OUI

NON

This is the only procedure available.

If other procedural possibilities exist, please describe them

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

OUI

NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

The onus is on the applicant to show that he or she meets the requirements of the immigration rules. UK Visas give general guidance on the information needed which can be summarised as follows:

1. *Visa application form (VAF 1)*
2. *Visa fee (This cannot be refunded, and they must normally pay it in the local currency of the country where they are applying.)*
3. *Passport or travel document (with six months validity)*
4. *A recent passport-sized colour photograph*
5. *Evidence of relationship. This can take the form of :*
 - a. *For spouses/civil partners -marriage or civil partnership certificate*
 - b. *For children - birth certificate (or adoption papers)*
 - c. *For unmarried/same sex partners – proof of two years’ cohabitation in the form of correspondence sent to the same address (there are variations in the approach of missions and some require evidence of joint commitment such as joint bank accounts but it is questionable whether this is an accurate reflection of the requirements of the immigration rules)*
6. *Evidence that the dependents can be supported and accommodated without needing any help from public funds (public funds are strictly defined and do not include the UK National Health Service). This evidence can be from the sponsor or dependant (more usually from the sponsor) and will take the form of :*
 - a. *Recent bank statements (usually latest six months)*
 - b. *Recent wage slips (usually the latest six months)*
 - c. *Proof of rental or ownership of property in UK*
7. *A copy of the pages from the sponsor’s passport showing permission to stay, if they are already in the UK, and*
8. *Sponsor’s original immigration employment document (e.g. the work permit)*

The requirements vary from mission to mission so the exact requirements of that mission must be checked before an application is submitted. Applicants are well advised to do more than the minimum and should also, in the cases of spouses, civil partners and unmarried/same sex partners, provide evidence that their relationship is genuine and subsisting.

Q.36. A – Family relationships according to article 4?

- a. *For spouses/civil partners -marriage or civil partnership certificate*
- b. *For children - birth certificate (or adoption papers)*
- c. *For unmarried/same sex partners – proof of two years’ cohabitation in the form of correspondence sent to the same address (there are variations in the approach of missions and some require evidence of joint commitment such as joint bank accounts but it is questionable whether this is an accurate reflection of the requirements of the immigration rules)*

Applicants are well advised to do more than the minimum and should also, in the cases of spouses, civil partners and unmarried/same sex partners, provide evidence that their relationship is genuine and subsisting.

Q.36. B – Accommodation conditions laid down in article 7?

Proof of rental or ownership of property in UK

Q.36. C – Sickness insurance conditions?

There is no sickness insurance condition and dependents will be entitled to use the British National Health Service. Some missions now require a medical certificate in relation to certain diseases (e.g. applicants from Thailand must provide a certificate to show that they do not have TB)

Q.36. D – Certified copies of family member(s)' travel documents?

UK Visas just state 'copy' but a certified copy is advisable.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

OUI

NON

Investigations:

OUI (*possible*)

NON

If yes, describe them briefly

An interview is undertaken by an entry clearance officer who is part of the staff of the mission. Sponsors are not required to attend and would usually be excluded from the interview even if present at the time of the interview (this is at the discretion of the mission). There is no set format and the Entry Clearance Officer may ask wide-ranging questions, especially in relation to the genuine nature of a relationship.

With regard to investigations, the most usual is a request to the Home Office in the UK in relation to an applicant's prior immigration history in the UK

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Q.38. A – Existence of family ties and other elements such as a common child?

OUI (but see below for most important aspects)

NON

Specify

UK Visas simply state:

'The Entry Clearance Officer will need to see evidence of a two-year relationship. This may include:

- documents showing joint commitments, such as bank accounts, investments, rent agreements or mortgages*
- letters linking you to the same address, and official records of your address '*

In practice, it is the second point which is crucial. Some missions place some emphasis on the first point but certainly not all. Applicants are advised to use whatever means they can to show that they have been 'living together in a relationship akin to marriage which has subsisted for two years or more' This may include statements from the couple, letters of support from third parties, a photographic history of relationship, evidence of continued contact while apart, evidence of holidays spent together and mementoes. This is a non-exhaustive list.

Q.38. B - Previous cohabitation?

OUI

NON

Proving two years cohabitation is the most important part of the application and missions expect to see letters linking the couple to the same address

Q.38. C - Registration of a partnership

OUI

NON

Unmarried/same sex partners are, by their very nature, usually not in a registered relationship. However, it is possible that they may be in a registered relationship not recognised by the UK as marriage or equivalent to civil partnership. If this is the case, then that registered relationship may still be evidence of a genuine commitment to each other, notwithstanding that it is not recognised by the UK. It is not a substitute, though, for proving two years cohabitation.

(please note that spouses and civil partners do not need to show previous cohabitation)

Q.38. D - Any other reliable means of proof foreseen in national law?

OUI

NON

If yes, specify which ones:

There is no set list and applicants are advised to use whatever means they can to show that they have been 'living together in a relationship akin to marriage which has subsisted for two years or more' This may include statements from the couple, letters of support from third parties, a photographic history of relationship, evidence of continued contact while apart, evidence of holidays spent together and mementoes. This is a non-exhaustive list.

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?

OUI

NON

Is this obligation sanctioned and how?

The immigration rules relating to the family members require that the first application for the right to reside in the United Kingdom be made from outside the United Kingdom (this does not apply to subsequent applications for extensions of the right to reside).

There was previously some flexibility in this (especially with regard to unmarried partners) but, in line with UK government policy, this position is now strictly enforced. It is envisaged this requirement would only be waived in the most exceptional cases.

The passport of the family member is held by the British mission while the application is considered.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

OUI

NON

Please specify

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

OUI

NON

In practice, applications are usually decided in a period between one day and three months- the length of time depends on the British mission who is making the decision. A period of nine months would only be reached in a situation where the application is refused and an appeal lodged.

If necessary, please specify

Q.42 – This time limit can be extended (a 5 §4 alinea 2) ?

OUI

NON

Not applicable – no time limit

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

OUI

NON

Not applicable

If yes, please specify

Q.43. B – What is the length of the extension?

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

Not applicable

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

OUI

NON

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State's legislation and authorities during examination of the application (article 5§5) ?

The immigration rules do not explicitly provide for this and it cannot be considered a guiding principle for the family reunification of children.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

- *Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.*
- *The same assessment applies regarding the option to set up a period of lawful residence not exceeding two years before applying for family reunification.*

- According to article 8, the Court of justice states: *"That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights*
- *"It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State's reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).*

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

OUI

NON

If yes, which ones?

The Immigration Rules contain wide-ranging general grounds which must or can be used to justify a refusal of an application by a family member (paragraph 320)

These include the following situations where entry must be refused:

“(6) where the Secretary of State has personally directed that the exclusion of a person from the United Kingdom is conducive to the public good;

(7) save in relation to a person settled in the United Kingdom or where the Immigration Officer is satisfied that there are strong compassionate reasons justifying admission, confirmation from the Medical Inspector that, for medical reasons, it is undesirable to admit a person seeking leave to enter the United Kingdom.”

They also include the following situation where entry can be refused:

(19)where, from information available to the Immigration Officer, it seems right to refuse leave to enter on the ground that exclusion from the United Kingdom is conducive to the public good; if, for example, in the light of the character, conduct or associations of the person seeking leave to enter it is undesirable to give him leave to enter.

Though in relation to pre-entry cases, the word ‘security’ does not appear, the grounds for refusal are wide and can easily be used to cover this under the ‘conducive to public good’ refusal.

Q.47. B – Withdraw an application for family reunification?

OUI

NON

If necessary, please specify

Not applicable – an application would not be withdrawn, it would be refused.

Q.47. C – Refuse to renew a family member's residence permit?

OUI

NON

If necessary, please specify

There are separate grounds for refusal for an application to renew the right to remain from within the United Kingdom. These are found at paragraph 322 of the immigration rules and include:

“5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his character, conduct or associations or the fact that he represents a threat to national security;”

Also, the Home Office may deport a person on the ground that their presence is not 'conducive to the public good'. Such action does not have to wait for an application to renew to be made.

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

OUI

NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

OUI

NON

If necessary, please specify

In deciding whether to deport, a wide range of issues have to be taken into consideration which are set out in the Immigration Rules (paras 364-368), including the following:

- *the person's age;*
- *their length of residence in the UK;*
- *their strength of connections with the UK;*
- *their personal history, including character, conduct and employment record;*
- *their domestic circumstances;*
- *the nature of any offence of which the person has been convicted;*
- *the person's previous criminal record;*
- *any compassionate circumstances*
- *any representations made on the person's behalf.*

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

OUI

NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a) ?

OUI

NON

Q.51 – If yes:

Q.51. A – What are those conditions?

The housing requirement is complex.. The Rules state that 'accommodation must be owned or occupied exclusively'. Home Office guidance (Immigration Department Instructions Chp 8, s1, annex F, para 6) states that:

'Accommodation can be shared with other members of a family provided that at least part of the accommodation is for the exclusive use of the sponsor and his dependants. The unit of accommodation may be as small as a separate bedroom but:

- *must be owned or legally occupied by the sponsor;*
- *its occupation must not contravene public health regulations; and*
- *its occupation must not cause overcrowding as defined in the Housing Act, 1985.'*

Q.51. B – How are they assessed?

The Housing Act provides two tests for overcrowding but the Home Office only relies on one. The number of persons permitted to stay in the accommodation is dependent on the number of rooms available. Rooms are only permitted to be included in the count if firstly, they are of a type usually used as a bedroom or a living room (ie kitchens and bathrooms do not count) and if they are more than 50 square feet (roughly 4.6 square metres).

The table below sets out the permitted number of people:

<i>Number of rooms</i>	<i>Permitted number of persons</i>
<i>1</i>	<i>2</i>
<i>2</i>	<i>3</i>
<i>3</i>	<i>5</i>
<i>4</i>	<i>7.5</i>
<i>5</i>	<i>10</i>

An additional two persons are allowed for each room in excess of five

Children under the age of one do not count and children aged between one and ten years only count as half a person.

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

OUI (*Comparable to the ‘minimum’ conditions not the ‘average’ or ‘normal’ conditions*)

NON

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

OUI

NON

Q.53 – Are stable resources required (a7 §1c) ?

OUI

NON

Specify their nature and content

The income requirement for individuals is that they can adequately 'maintain and accommodate themselves in the United Kingdom without recourse to public funds'. There is no specific sum set out in legislation, but the Home Office's view is that the level

set by income support is the minimum standard of support considered to be acceptable. Each case though is judged individually and is dependent on what the individuals need.

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

It is in comparison to income support which is the level the state believes is the minimum that an individual can survive upon in the UK. The comparison is therefore not with wages but with benefits given by the state to those who have a low income or no income at all.

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

OUI

NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

OUI

NON

Not applicable

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

OUI

NON

Q. 58 – Does this period exceed two years?

Please specify

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

OUI

NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

OUI

NON

Not applicable

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

OUI

NON

No transposition but family reunification of refugees is allowed.

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

OUI

NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

OUI

NON

Which members of the family and under which conditions?

In addition to spouses and minor children, the immigration rules make provision for the civil partners, unmarried partners and same sex partners of refugees provided that the relationship subsisted prior to the refugee leaving the country of origin and provided that the couple intend to live together permanently (paragraph 352 of the Immigration Rules)

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

OUI

NON

What conditions are required?

Parents of refugees are not provided for in the Immigration Rules. The Home Office are currently drafting a new family reunion policy for refugees and this must be examined when published for an indication of the Home Office position. The previous policy did allow for other family members in ‘compassionate, compelling circumstances’. As the immigration rules do not deal with this matter, the parents of unaccompanied refugees may need to look at principles laid down in the UNHCR Handbook, the Qualification directive and the ECHR.

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

OUI

NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

OUI

NON

Which ones?

There are no specific rules on this. In practice missions will look at other evidence to establish a relationship. With children they will at times ask for DNA tests. In the guidance followed by the missions it states that staff can request the original documents of the refugee from the Home Office to see whether somebody the refugee is claiming is a dependant was actually mentioned at the time the original asylum claim was made.

Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

OUI

NON

If yes, are those requirements comparable to those imposed to other third country nationals?

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

OUI

NON

If necessary specify

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

OUI

NON

If yes, which ones?

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

OUI

NON

If not, what is the length of this period? Is it different from the one normally applied?

There is no residence condition

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

OUI

NON

The speed with which the visa is issued will depend on the British mission which has

responsibility for the application.

If yes, how?

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

OUI

NON

What is the duration of the residence permit?

The family member will be granted permission to reside in the United Kingdom 'in line' with the sponsor. This will, in most cases, be for longer than one year. However, if the sponsor has less than one year left on their current permission to reside in the UK, then the family member will only be granted this length of time and will be expected to apply for further permission to remain from within the United Kingdom at the same time as the sponsor.

Q.71 – Is this residence permit renewable?

OUI

NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3) ?

OUI

NON

If no, please specify

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

OUI

NON

If no, please specify

Q.73. B - Regarding access to employment?

OUI

NON

Please specify the content of this access

The family member will be able to take employment or be self-employed without restriction. This may mean that the family member's right to take employment in the UK will be broader than the rights of the sponsor. For instance, a work permit holder sponsor must work for a named employer but the spouse of the work permit holder can work for any employer.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

OUI

NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

OUI

NON

If yes, please describe them and specify if a time limit is established to take advantage from them

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

OUI

NON

If yes, how?

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

OUI

NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

OUI

NON

Not applicable

If yes, how?

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

OUI

NON

Not applicable

If yes, how?

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

OUI

NON

If yes, please specify when and how for each category

The sponsor must complete five years in the UK before being eligible to apply for permanent residence (also known as indefinite leave to remain and settlement). The family member can apply for permanent residence at the same time as the sponsor (and it may be that the family member will reach permanent residence in less than five years as the family member may have joined the sponsor after the start of the five year period.)

The family member will only have autonomous residence on reaching permanent residence. If they wish to be autonomous of the sponsor before this point then they would need to obtain the right to reside in their own right in another category.

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

OUI

NON

Please explain

There is provision within the UK Immigration rules relating to bereavement and domestic violence but these only apply to the partners of settled individuals, they do not apply to the family members of those in a category leading to settlement.

If the family member wishes to remain, he or she will need to find another category of the immigration rules into which they can fit

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

OUI

NON

Not applicable

If necessary specify

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

OUI

NON

Not applicable

If necessary specify

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

OUI

NON

Not applicable

If necessary specify

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

OUI

NON

There is provision within the UK Immigration rules relating to bereavement and domestic violence but these only apply to the partners of settled individuals, they do not apply to the family members of those in a category leading to settlement.

If the family member wishes to remain, he or she will need to find another category of the immigration rules into which they can fit

If yes, how is this provision defined and transposed?

PENALTIES AND REDRESS

Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

OUI

NON

An application for the initial right to reside in the UK or a renewal of the right to reside can be refused if the requirements of the Immigration Rules are no longer satisfied.

Q.83. B – Absence of real martial or family relationship?

OUI

NON

If yes, how is this hypothesis assessed?

If an entry clearance officer is not satisfied that the relationship is genuine (whether that relationship is marriage, civil partnership, unmarried or same sex partnership) the application for the right to reside can be refused. This also applies when an application is made from within the United Kingdom for the renewal of the permit. The initial application will usually be assessed by interview but this is far less common in an application for renewal. Applicants are advised to provide evidence of their subsisting genuine relationship.

Q.83. C – Stable long term relationship with another person?

OUI

NON

If yes, how is this hypothesis assessed?

The unmarried and same sex partners rules specifically state that any other relationship must have permanently broken down. For any relationship, though, the existence of another relationship would lead the decision maker to doubt the genuine subsisting nature of the relationship and refuse on this basis.

Q.83. D – False or falsified documents?

OUI

NON

The general grounds of refusal in the immigration rules make specific provision for this at paragraph 320 stating that an application can be refused in circumstances where:

“ (21) Whether or not to the applicant's knowledge, the submission of a false document in support of an application.”

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

OUI

NON

Q.83. F – If yes, how is this hypothesis assessed?

If the decision maker is not satisfied that the marriage is genuine then the application can be refused on this basis. Further, a person who obtains, or tries to obtain, leave to enter or leave to remain by deception can be prosecuted (s24A Immigration Act 1971). In addition, under the Immigration and Asylum Act 1999, section 24, there is a duty on marriage registrars to report to the Home Office any suspicions of a sham marriage. These are defined as a marriage between a British or EEA national and a third country national 'for the purposes of avoiding the effect of [...] United Kingdom immigration law...'.

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

OUI

NON

Q.83. H – What type of control are organised thereof?

If the sponsor's right of residence comes to an end and the family member does not enjoy an autonomous right of residence, then the family member, if they wish to remain in the UK, must find another category in which they can stay. If they do not, and their right to reside comes to an end, then the UK can administratively remove them from the UK.

It is possible that the UK could withdraw the right of residence if it becomes aware that the family member is no longer entitled to it (for instance, if the family member is questioned when entering a UK port). This practice is referred to as 'curtailing leave'. In practice, this appears to happen rarely and it is more common for the right of residence not to be renewed (if a renewal is applied for).

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

OUI

NON

If yes, under which modalities?

This question will rarely arise. Most of the categories which are the subject of this questionnaire involve being employed in the United Kingdom in some capacity. Therefore, when the sponsor renews the residence permit, they will still need to meet the requirements of that category. For example, a Highly Skilled Migrant will have to have earned a certain income, a work permit holder will need to be in the same employment. However, a situation could be envisaged where the sponsor was on a low income and could potentially need to rely on social assistance. The immigration rules do not prohibit the taking into account the resources of family members when considering the renewal.

Q.85 – Does your Member State's legislation take into consideration (a. 17) :

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

OUI

NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, ...)

This element is not taken into account other than to prove genuineness of relationship. In that sense it could be argued that the 'nature and solidity of the person's family relationship' are considered when a decision is taken. The UK will also consider Article 8 of ECHR to which this may be relevant.

Further the UK does have a concession concerning minor children who have been in the UK for seven years. It is possible that if the family lived in the UK in some other capacity (for instance as the family members of a student) prior to residing as the family members of a sponsor in a category leading to settlement, it is possible that the seven year concession will be engaged.

Q.85. B - The existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family?

OUI

NON

The existence of family, cultural and social ties is not an element that is taken into consideration when a decision is taken under the immigration rules. This may be relevant, though, when the UK considers Article 8 of ECHR.

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, ...)

Q.86 – Do the sponsor and/or members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

OUI

NON

A decision to refuse entry clearance to a family member would carry with it an appeal right to an independent tribunal. The relevant provision granting a right to appeal is s82 Nationality, Immigration and Asylum Act 2002. The scope of the review is on the facts and on the law. (The grounds of appeal are set out in s84 Nationality, Immigration and Asylum Act 2002).

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1) ?

OUI

NON

THE UK IS NOT BOUND BY THIS DIRECTIVE

XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed. The immigration rules do not explicitly provide for this and it cannot be considered a guiding principle for the family reunification of children.

OBJECT Due regard to the best interest of minor children during examination of the application a. 5 § 5		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Explain the situation <u>before</u> transposition	Explain the situation <u>after</u> transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted <u>before</u> the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation <u>in advance in view of the directive</u> . <u>Indicate the precise date of adoption of the change</u>)	Complete this box by keeping the right appreciation and deleting the two others: <ul style="list-style-type: none"> • <i>Statu quo</i> • <i>More favourable than previous national rules</i> • <i>Less favourable than previous national rules</i> 	Complete this box by keeping the right appreciation and deleting the other one: <ul style="list-style-type: none"> • <i>More favourable than the directive</i> • <i>In line with the directive</i>

Q.88 B Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a

comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed

OBJECT Definition of the beneficiaries of the right to family reunification a. 4 § 4		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Explain the situation <u>before</u> transposition	Explain the situation <u>after</u> transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted <u>before</u> the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation <u>in advance in view of the directive</u> . <u>Indicate the precise date of adoption of the change</u>)	Complete this box by keeping the right appreciation and deleting the two others: <ul style="list-style-type: none"> • <i>Statu quo</i> • <i>More favourable than previous national rules</i> • <i>Less favourable than previous national rules</i> 	Complete this box by keeping the right appreciation and deleting the other one: <ul style="list-style-type: none"> • <i>More favourable than the directive</i> • <i>In line with the directive</i>

Q.88 C Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed

Please use one box per object and duplicate it if necessary

OBJECT Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Explain the situation <u>before</u> transposition	Explain the situation <u>after</u> transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted <u>before</u> the deadline for transposition or even before the adoption of the directive in cases of	Complete this box by keeping the right appreciation and deleting the two others: <ul style="list-style-type: none"> • <i>Statu quo</i> • <i>More favourable</i> 	Complete this box by keeping the right appreciation and deleting the other one: <ul style="list-style-type: none"> • <i>More favourable than the</i>

	Member States having amended their national legislation <u>in advance in view of the directive.</u> <u>Indicate the precise date of adoption of the change)</u>	<p><i>than previous national rules</i></p> <ul style="list-style-type: none"> • <i>Less favourable than previous national rules</i> 	<p><i>directive</i></p> <ul style="list-style-type: none"> • <i>In line with the directive</i>
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Q.88 D Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed

Please use one box per object and duplicate it if necessary

OBJECT Requirements for the exercise of family reunification (a. 7)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Explain the situation <u>before</u> transposition	Explain the situation <u>after</u> transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted <u>before</u> the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation <u>in advance in view of the directive.</u> <u>Indicate the precise date of adoption of the change)</u>	<p>Complete this box by keeping the right appreciation and deleting the two others:</p> <ul style="list-style-type: none"> • <i>Statu quo</i> • <i>More favourable than previous national rules</i> • <i>Less favourable than previous national rules</i> 	<p>Complete this box by keeping the right appreciation and deleting the other one:</p> <ul style="list-style-type: none"> • <i>More favourable than the directive</i> • <i>In line with the directive</i>

Q.88 E Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed

Please use one box per object and duplicate it if necessary

OBJECT Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Explain the situation <u>before</u> transposition	Explain the situation <u>after</u> transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted <u>before</u> the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation <u>in advance in view of the directive. Indicate the precise date of adoption of the change</u>)	Complete this box by keeping the right appreciation and deleting the two others: <ul style="list-style-type: none"> • <i>Statu quo</i> • <i>More favourable than previous national rules</i> • <i>Less favourable than previous national rules</i> 	Complete this box by keeping the right appreciation and deleting the other one: <ul style="list-style-type: none"> • <i>More favourable than the directive</i> • <i>In line with the directive</i>

Q.88 F Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed

Please use one box per object and duplicate it if necessary

OBJECT Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Explain the situation <u>before</u> transposition	Explain the situation <u>after</u> transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted <u>before</u> the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national	Complete this box by keeping the right appreciation and deleting the two others: <ul style="list-style-type: none"> • <i>Statu quo</i> • <i>More favourable than previous national</i> 	Complete this box by keeping the right appreciation and deleting the other one: <ul style="list-style-type: none"> • <i>More favourable than the directive</i> • <i>In line with</i>

	legislation <u>in advance in view of the directive. Indicate the precise date of adoption of the change)</u>	<i>rules</i> <ul style="list-style-type: none"> • <i>Less favourable than previous national rules</i> 	<i>the directive</i>
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Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed

Please use one box per object and duplicate it if necessary

OBJECT (to be <u>precisely</u> indicated by the national rapporteur)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Explain the situation before transposition	Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation <u>in advance in view of the directive. Indicate the precise date of adoption of the change)</u>	Complete this box by keeping the right appreciation and deleting the two others: <ul style="list-style-type: none"> • <i>Statu quo</i> • <i>More favourable than previous national rules</i> • <i>Less favourable than previous national rules</i> 	Complete this box by keeping the right appreciation and deleting the other one: <ul style="list-style-type: none"> • <i>More favourable than the directive</i> • <i>In line with the directive</i>

Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

NO

YES

Not applicable – not transposed

Q.89.B. **If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).**

NO

YES

Not applicable – not transposed

Q.89.C. **If yes, give some of examples:**

Q.89.D. **If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.**

Q.90. **Quote *interesting* decisions of jurisprudence related to the directive, its **transposition or implementation** (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.**

Not applicable – not transposed

Please use one box per decision and duplicate it if necessary

DECISION OF SUPREME COURTS	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>
DECISION OF APPEAL COURTS	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>
DECISION(S) IN FIRST RESORT	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>

Q.91 **Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.**

There are no problems with the translation of the directive

There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

Not applicable – not transposed

Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of **third country nationals and/or from the Member State** any **interesting or innovative practice** in your Member State

Please use one table per practice and duplicate it if necessary

OBJECT OF THE PRACTICE	EXPLANATIONS

Q.92 B. Please add here **any other interesting element** in your Member State which you did not had the occasion to mention in your previous answers

The United Kingdom has not implemented this directive. However, its practices do reflect at least the minimum required by the directive and, in many areas, the United Kingdom does more than the directive states is mandatory.

Areas in which the United Kingdom's practice goes beyond that directive's bare minimum include:

Article 4

- 1. The recognition of registered same sex relationships - both civil partnerships that are contracted within the United Kingdom and certain overseas relationships that are considered by UK law to be equivalent to civil partnership.*
- 2. The recognition of unmarried partnerships for both opposite sex and same sex couples.*
- 3. No extra requirements on children over the age of 12 or 15 and the recognition of minor children until the age of 18 (the age of majority in the UK).*

Article 5

- 4. Though no set time limit is given, a nine month period to decide an application would be extremely rare at a British mission.*

Article 7

- 5. The UK's requirements for support and accommodation are set at a level which is comparable to the minimum in the UK rather than 'normal for a comparable family'*
- 6. Sickness insurance is not required*

7. *No integration measures are required*

Article 8

8. *No period of residence is required before an application for family reunification can be made.*

Article 10

9. *The civil partners, unmarried and same sex partners are included as dependants in the immigration rules relating to refugees.*

Article 12

10. *No extra requirements are placed on the family members of refugees if the application for family reunion is not made within three months.*

Article 14

11. *There is no restriction on the family member's right to be employed or take self-employment*

However, there are provisions within the directive which, while not mandatory, would, if implemented, improve the practice of the United Kingdom with regards to the family members of third country nationals in a category leading to settlement. These include:

Article 4

The UK does not make provision for the first-degree relatives in the ascending line nor for adult unmarried children (apart from in one very limited situation).

Article 5

The concept of 'best interests of the minor children' is not explicitly provided for in the Immigration Rules. It cannot currently be considered a guiding principle of family reunion for children in the UK. An explicit statement to this effect could only improve UK practice.

Article 10

With regard to refugees, the UK does not make explicit provision in the immigration rules for the first-degree relatives in the ascending line nor for adult unmarried children.

Article 15

The UK does not make any provision for the grant of an autonomous permit in the event of breakdown of a relationship due to 'particularly difficult circumstances.' The UK does, for

very good policy reasons, offer an autonomous permit to the partners of settled persons whose relationship breaks down due to domestic violence or bereavement. These same policy reasons should also apply to the family members of third country nationals in a category leading to settlement. This is a failing in the UK's approach.